

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

PAUL J. MANAFORT, JR.,

Defendant.

Case No. 17-cr-201-1-ABJ

**IN RE: PETITIONS FOR RELIEF
CONCERNING CONSENT ORDER OF
FORFEITURE**

Case No. 1:18-mc-00167-ABJ

**CONSENT MOTION FOR ENTRY OF FINAL ORDER OF FORFEITURE AS TO
721 FIFTH AVENUE, UNIT 43G, NEW YORK, NY 10022**

The United States of America, by and through its undersigned counsel, respectfully submits this motion pursuant to Fed. R. Crim. P. 32.2(c)(2) for entry of a Final Order of Forfeiture Motion with respect to the real property, 721 Fifth Avenue, #43G, New York, New York, 10022, that is subject to a preliminary order of forfeiture in this action. March 13, 2019, Order of Forfeiture, Cr. Dkt. Nos. 549, 556-1.¹ As set forth below, the time period for the submission of third party petitions to contest forfeiture pursuant to 21 U.S.C. § 853(n) has closed, and all such petitions have been resolved by settlements endorsed by the Court.

A proposed Final Order of Forfeiture Final Order of Forfeiture as to 721 Fifth Avenue, #43G, New York, New York, 10022 is submitted with this motion. The proposed order sets out in more detail the facts and procedural history summarized below.

¹ Docket entries from *United States v. Paul J. Manafort, Jr.*, Case No. 17-cr-201-1 (D.D.C.) are referred to as “Cr. Dkt. No.”. Docket entries from the miscellaneous case number for the ancillary proceedings *In Re: Petitions for Relief Concerning Consent Order of Forfeiture*, Case No: 1:18-mc-167 (D.D.C.) are referred to as “Mc. Dkt. No.”.

I. The Property Subject to the Proposed Final Order of Forfeiture

This motion seeks entry of a Final Order of Forfeiture regarding the following (the "Fifth Avenue Property"):

The real property and premises commonly known as 721 Fifth Avenue, #43G, New York, New York, 10022.

This property is listed in the preliminary order of forfeiture at paragraph 2(i). March 13, 2019, Order of Forfeiture, Cr. Dkt. No. 549, Cr. Dkt. No. 556-1.

The Fifth Avenue Property is more specifically described in its Deed as:

The residential Unit (The "Unit") known as Unit No. 43-G, in the premises known as Trump Tower Condominium and by the street numbers 721-725 Fifth Avenue, Borough of Manhattan, City, County and State of New York, being designated and described as Unit No. 43-G in the Declaration Establishing a plan for condominium ownership of said premises under Article 9-B of the Real Property Law of the State of New York (The New York Condominium Act") dated 2/24/1983 and recorded in the New York County Office of the Register of the City of New York (The "City Register's Office") on 3/23/1983 in Reel 674, Page 848 (Hereinafter, referred to as the "Declaration") and also designated as Tax Lot 1112 in Block 1292 of Section 5 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of the City of New York and on the Floor Plans of building, certified by Swanke Hayden Connell and Partners, Architects, on 2/2/1983 and filed with the Real Property Assessment Department of the City of New York on 3/18/1983 as Condominium Plan No. 86 and Also filed in the City Register's Office on 3/23/1983 as Condominium Plan No. 86. Together with an undivided .2644227 percent interest in the common elements (as such term is defined in the declaration). The premises in which the unit is located is more particularly described herein as Parcel A.

PARCEL A: All that certain lot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, Bounded and described as follows: Beginning at the corner formed by the intersection of the Northerly side of East 56th Street with the Easterly side of Fifth Avenue; Running thence Easterly along the said Northerly side of East 56th Street, 175 feet; Thence Northerly parallel with said Easterly side of Fifth Avenue and part of the distance through A Party Wall, 100 feet 5 inches to the Center Line of the Block; Thence Westerly along said Center Line of the Block, 50 Feet; Thence Northerly parallel with the Easterly side of Fifth Avenue, 15 Feet; Thence Westerly parallel with the Northerly side of East 56 Street 125 feet to the Easterly side of Fifth

Avenue, and Thence Southerly along the Easterly side of Fifth Avenue, 115 feet 5 inches to the point or place of Beginning.
 PARCEL B: (AFFECTS COMMON ELEMENTS) All that certain lot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows: Beginning at a point on the Southerly side of East 57th Street, distant 125 Feet Easterly from the intersection of the Easterly side of Fifth Avenue and the Southerly side of 57th Street; Thence Southerly and parallel with the Easterly side of Fifth Avenue, 100 feet 5 inches; Thence Easterly and parallel with the Southerly side of 57th Street, 50 Feet; Thence Northerly and again parallel with the Easterly side of Fifth Avenue, 100 feet 5 inches to the Southerly side of 57th Street; Thence Westerly along the Southerly side of 57th Street 50 feet to the point or place of Beginning.²
 APN: Block 1292, Lot 1112

II. Background

On September 14, 2018, the defendant, Paul J. Manafort, Jr., pleaded guilty to a two-count Superseding Criminal Information ("Information") charging in Count One, *inter alia*, a conspiracy to violate the Foreign Agents Registration Act ("FARA"), in violation of Title 18, United States Code, Section 371 and 3551 *et seq.* and Title 22, United States Code, Sections 612, 618(a)(1), and 618(a)(2). Cr. Dkt. Nos. 419, 422, 423. The Information gave notice that upon conviction under Count One, the United States would seek entry of a money judgment of forfeiture, as well as forfeiture of certain specific properties, including, *inter alia*, "All funds held in account number XXXX7988 at Charles A. Schwab & Co. Inc., and any property traceable thereto..." (the "Schwab Account"), pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(b), 21 U.S.C. § 853(p), and 28 U.S.C. § 2461(c). Cr. Dkt. No. 419 at ¶69.

In his Plea Agreement, the defendant admitted to the forfeiture allegations in the Information, and, in his Statement of the Offenses and Other Acts, he admitted that he obtained at least \$11,000,000 as a result of his conspiracy to violate the FARA in violation of 18 U.S.C. §

² This legal description, which is also included in the proposed Final Order of Forfeiture, cures two minor scrivener's punctuation errors in the legal description of the property attached to the Notice of Forfeiture.

371, 22 U.S.C. §§ 612 and 618. Cr. Dkt. No. 422 at 10, 423 at 2-3. He also consented, *inter alia*, to the forfeiture of the Fifth Avenue Property in lieu of the Schwab Account, the Schwab Account having been identified in the Information as subject to forfeiture as proceeds traceable to the conspiracy to violate FARA offense alleged in Count One, or property traceable thereto, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). Cr. Dkt. No. 422 at ¶12(a)(9), Cr. Dkt. No. 423 at ¶ 43(i). The defendant also consented to the forfeiture of the Fifth Avenue Property as a substitute asset pursuant to 18 U.S.C. § 982(b), 21 U.S.C. § 853(p), and 28 U.S.C. § 2461(c). Cr. Dkt. No. 422 at ¶12(b), Cr. Dkt. No. 423 at ¶43(i).

On October 10, 2018, with the defendant's consent, the Court entered a Consent Order of Forfeiture signed by the Court on October 9, 2018, constituting a preliminary order of forfeiture ("Consent Order of Forfeiture"). Cr. Dkt. No. 443. In the Consent Order of Forfeiture, this Court found: "based on the evidence and information before it, including the defendant's plea agreement, that [*inter alia*, the Fifth Avenue Property] is subject to forfeiture" and so ordered its forfeiture. CR Dkt. No. 443 at 3-4.

At sentencing on March 13, 2019, the Court amended the preliminary order of forfeiture and incorporated the revised order into the criminal judgment. *See* March 13, 2019, Order of Forfeiture. Cr. Dkt. Nos. 549, 556-1. The Information, Plea Agreement and Statement, along with the record in this case, establish the requisite nexus between the Schwab Account and the defendant's offense, and that the defendant has an interest in the Fifth Avenue Property. The March 13, 2019, Order of Forfeiture entered forfeiture pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(b), 21 U.S.C. § 853(p), and 28 U.S.C. § 2461(c), and included forfeiture of the Fifth Avenue Property, other specific Forfeited Assets, and a Personal Money Judgment of Forfeiture in the amount of \$11 million to be offset by the forfeiture of the specific Forfeited Assets. *Id.* at ¶¶1-4.

III. Entry of a Final Order of Forfeiture is Appropriate

The United States seeks entry of a final order of forfeiture with respect to the Fifth Avenue Property pursuant to Federal Rule of Criminal Procedure 32.2 and 21 U.S.C. § 853, as incorporated by 18 U.S.C. § 982(b). Rule 32.2(b)(4)(A) provides:

At sentencing – or at any time before sentencing of the defendant consents – the preliminary forfeiture order becomes final as to the defendant. If the order directs the defendant to forfeit specific property, it remains preliminary as to third parties until the ancillary proceeding is concluded under Rule 32.2(c).

Fed. R. Crim. P. 32.2(b)(4)(A). Under Title 21 U.S.C. § 853(n)(7), the United States shall have clear title to any forfeited property following the Court’s disposition of all petitions and the expiration of the time period provided for the filing of petitions. Because the Court’s March 13, 2019, Order of Forfeiture is final as to the defendant, notice of the forfeiture was provided in accordance with the Federal Rules, and the interests of all third parties asserting an interest in the property have been resolved by settlement, entry of the requested final order is appropriate.

By its terms, the March 13, 2019 Order of Forfeiture became final as to the defendant upon its entry, and was made part of his sentence and included in the judgment pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure. Cr. Dkt. Nos. 549, 556-1 at ¶10. Accordingly, the defendant retains no interest in the Fifth Avenue Property.

However, an order of forfeiture as to a defendant for specific property does not address the interests that a third party may have in that property. Fed. R. Crim. P. 32.2(b)(2)(A) (“The Court must enter the [forfeiture] order without regard to any third party’s interest in the property.”). It remains a preliminary order as to third parties until the ancillary proceeding is completed. Fed. R. Crim. P. 32.2(b)(4)(A).

The purpose of the ancillary proceeding is to “resolve” any third party claims to specific property subject to a forfeiture order. *United States v. Cox*, 575 F.3d 352, 358 (4th Cir. 2009); *see also* Fed. R. Crim. P. 32.2(b)(2)(A) (Determination of third party interest is “deferred until any third party files claim in an ancillary proceeding.”). The Government commences the ancillary proceeding by publishing notice of the forfeiture order and “send[ing] notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture.” Fed. R. Crim. P. 32.2(b)(6)(A); *see also* 21 U.S.C. § 853(n)(1) (Government must publish notice of the order and “may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property.”). A third party must file a claim “within thirty days of the final publication of notice or his receipt of [direct] notice . . . whichever is earlier.” 21 U.S.C. § 853(n)(2).

As set forth in the United States’ Declaration of Notice and Publication, Cr. Dkt. No. 545, the United States provided notice in accordance with 21 U.S.C. § 853(n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, and Rule G(4) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. This notice included notice by publication, as well as direct written notice to persons who reasonably appeared to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding or who were known to have alleged an interest in the forfeited property, including, but not limited to: Kathleen Manafort, UBS Bank USA (“UBS Bank”), and the condominium association, Trump Tower Condominium. Cr. Dkt. No. 545.

Following notice of the Consent Order of Forfeiture, only two interested parties asserted an interest in the Fifth Avenue Property: UBS Bank and the Residential Board of Trump Tower Condominium. *See* Mc. Dkt. Nos. 4, 13.

On February 21, 2019, the Court endorsed a Stipulation and Order of Settlement between the United States and UBS Bank resolving its petition concerning the Fifth Avenue Property (the “UBS Bank Stipulation and Order”). Mc. Dkt. No. 43 (docketed on February 22, 2019). On March 1, 2019, the Court endorsed a Stipulation and Order of Settlement between the United States and the Residential Board of Trump Tower, acting on its own behalf and on behalf of Trump Tower Condominium, resolving its petition concerning the Fifth Avenue Property (the “Trump Tower Condominium Stipulation and Order”). Mc. Dkt. No. 47 (docketed on March 4, 2019).

Under the UBS Bank Stipulation and Order and the Trump Tower Condominium Stipulation and Order, the petitions of these parties were dismissed upon the Court’s endorsement of the settlements. Mc. Dkt. Nos. 43 ¶2, 47 at ¶2. However, the UBS Bank Stipulation and Order and the Trump Tower Condominium Stipulation and Order are expressly incorporated into and attached to the proposed Final Order of Forfeiture. *See* proposed Final Order of Forfeiture at ¶¶ 1, 3, 4.

No other petitions were filed or made in this action as to the Fifth Avenue Property, no other parties have appeared to contest its forfeiture, and the statutory time periods in which to do so for all known potential claimants have expired. Pursuant to Title 21 U.S.C. § 853(n)(7), because all petitions have been resolved, the United States is therefore entitled to have clear title to the Fifth Avenue Property and to warrant good title to any subsequent purchaser or transferee.

IV. Conclusion

Pursuant to Rule 32.2(c)(2) of the Federal Rules of Criminal Procedure, “[w]hen the ancillary proceeding ends, the court must enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party rights.” The government may also

“request an order from the court declaring that the government has met all of the statutory notice requirements, that no meritorious third-party claims were filed, and that the government has clear title to the forfeited property.” *United States v. Gilbert*, 244 F.3d 888, 913 (11th Cir. 2001).

Counsel for the United States has conferred with counsel for UBS Bank and the Residential Board of Trump Tower, which do not oppose this motion.

Wherefore, the United States respectfully requests that the Court enter the proposed Final Order of Forfeiture as to the Fifth Avenue Property, as attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2019, I have provided notice of the forgoing through the Court's Electronic Filing System to such counsel of record or pro se litigants as have consented to accept service through such means and by filing a notice of this filing in the related miscellaneous case number, *In Re Petitions Re Consent Order of Forfeiture*, Case No: 1:18-mc-167 (D.D.C.). I have also transmitted a copy of this filing via electronic mail to the following, who do not appear to have registered for notice through the Court's Electronic Filing System or who have not filed an appearance in this matter:

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